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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,154	02/11/2005	Johann Natterer	2852/5	1572

7590 06/09/2006

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EXAMINER

DURAND, PAUL R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/524,154	Applicant(s) NATTERER, JOHANN	
	Examiner Paul Durand	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>04/05_08/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the phrase "the upper film" lacks antecedent basis in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Stockley (US 6,408,598).

In claim 1, Stockley discloses the invention as claimed including film 24, located a distance above a product 16, which is clamped along an edge which surrounds tray 12, and is deformed in a direction away from the product, where the tray is raised to the film by means 54 and the tray and film are heat sealed together (see Figs. 1-6 and C10,L27 – C11,L15).

In claims 2 and 3, Stockley discloses the invention as claimed including evacuating and backfilling the spaces surrounding the product prior to sealing (see C10,L27 – C11,L15).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stockley in view of Sanfilippo et al (US 6,202,388).

In claims 4, Stockley discloses the invention as claimed including sealing station, comprised of sealing heads 49, an internal space between the upper and lower portions, which are movable relative to each other, tray 12 inserted into the space in the open position, an upper film 24, supplied above the interior space, drive mechanism 54, for moving the upper and lower portions relative to one another for sealing. What Stockley does not explicitly disclose is the specific film feeding device and the use of a controller to control the operation.

However, Sanfilippo teaches that it is old and well known in the art of packaging to provide an upper film feed means 14 for feeding film 15, into a packaging machine 10, controlled by programmable controller 16, which controls the feed of the film, sealing

operation and gas flow for the purpose of synchronizing a packaging operation (see Fig. 1 and C6,L56-67).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made at have provided the invention of Stockley with the feed and controller means as taught by Sanfilippo for the purpose of electrically synchronizing a packaging operation.

In claim 5, Stockley discloses the invention as claimed including evacuating and backfilling the spaces surrounding the product prior to sealing (see C10,L27 – C11,L15).

In claims 6 and 8 , Stockley discloses the invention as claimed including a sealing station, having an internal space between the upper and lower portions, which are movable relative to each other, carrying device 52 for accommodating tray 12 in the interior of the chamber, which is bi-directional from a lower open position, where the tray is spaced from the plane of the upper film and a second position where the tray is raised to a minimum position for the film when the station is closed (see Figs. 1-6 and C10,L27 – C11,L15). What Stockley does not explicitly disclose is the feeding of the film to the machine.

However, Sanfilippo teaches that it is old and well known in the art of packaging to provide an upper film feed means 14, which feeds film 15 into a packaging machine for the purpose of providing a film to a machine prior to packaging a product (see Fig. 1 and C6,L56-67).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made at have provided the invention of Stockley with the film

feed means as taught by Sanfilippo for the purpose of providing a film to a machine prior to packaging a product.

In claim 7, Stockley discloses the invention as claimed including an upper forming area 42, with a recess facing the lower portion (see Fig. 2).

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand
May 23, 2006


Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700